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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,810	12/29/2005	Tadashi Mori	05826/LH	3982
1933 7590 11/19/2007 FRISHAUF, HOLTZ, GOODMAN & CHICK, PC 220 Fifth Avenue 16TH Floor NEW YORK, NY 10001-7708			EXAMINER	
			PEDDER, DENNIS H	
			ART UNIT	PAPER NUMBER
	'		3612	
			MAIL DATE	DELIVERY MODE
			11/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

į.	Application No.	Applicant(s)					
	10/562,810	MORI, TADASHI					
Office Action Summary	Examiner	Art Unit					
	Dennis H. Pedder	3612					
The MAILING DATE of this communication app Period for Reply	pears on the cover sheet with the c	orrespondence address					
A SHORTENED STATUTORY PERIOD FOR REPL' WHICHEVER IS LONGER, FROM THE MAILING DA - Extensions of time may be available under the provisions of 37 CFR 1.1 after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period of Failure to reply within the set or extended period for reply will, by statute Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be tin will apply and will expire SIX (6) MONTHS from , cause the application to become ABANDONE	N. nely filed the mailing date of this communication. D (35 U.S.C. § 133).					
Status							
· _ · · ·	Responsive to communication(s) filed on <u>01 November 2007</u> .						
,	,						
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.							
·	in parto Quayro, 1000 O.D. 11, 10	.0.0.210.					
Disposition of Claims		•					
	☐ Claim(s) 1-7 is/are pending in the application.						
4a) Of the above claim(s) <u>2 and 3</u> is/are withdrawn from consideration.							
5) Claim(s) 7 is/are allowed.							
7) Claim(s) is/are rejected.	S) Claim(s) <u>1,4-6</u> is/are rejected.						
8) Claim(s) are subject to restriction and/o	r election requirement.	•					
Application Papers							
9) The specification is objected to by the Examine	·						
10) The drawing(s) filed on is/are: a) acc		Examiner.					
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).							
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).							
11)☐ The oath or declaration is objected to by the Ex	caminer. Note the attached Office	Action or form PTO-152.					
Priority under 35 U.S.C. § 119							
12) Acknowledgment is made of a claim for foreign a) All b) Some * c) None of:	priority under 35 U.S.C. § 119(a))-(d) or (f).					
1. Certified copies of the priority documents have been received.							
2. Certified copies of the priority documents have been received in Application No							
3. Copies of the certified copies of the priority documents have been received in this National Stage							
application from the International Burea	* **						
* See the attached detailed Office action for a list	of the certified copies not receive	ed.					
Attachment(s)							
 Notice of References Cited (PTO-892) Notice of Draftsperson's Patent Drawing Review (PTO-948) 	4) 🔲 Interview Summary Paper No(s)/Mail D						
3) Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date	5) Notice of Informal F 6) Other:						

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DETAILED ACTION

Election/Restrictions

1. Claims 2-3 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on 7/18/2007. Claim 4 as amended is considered a subset of generic claim 1 and is acted on below.

Claim Rejections - 35 USC § 112

- The following is a quotation of the second paragraph of 35 U.S.C. 112:
 The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
- 2. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
- 3. The phrasing of the claim limitations in conditional format "if...if...if...if...if...if" is indefinite and contrary to statute. Further, the ambiguous phrasing of the "point is positioned at..." is considered ambiguous and indefinite as it does not specify the location on the respective member.
- 4. Further, as to claim 4, to recite the conditional in claim 1 followed by "each projecting member" in claim 4 is illogical.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- 6. Claims 1, 5, 6 are rejected under 35 U.S.C. 102(b) as being anticipated by any one of references A-C on the attached PTO-892.
- 7. Each of the above references has a lower traveling structure, a revolving superstructure frame, a work implement on the latter, a counterweight on the superstructure, and an operator's cab on the superstructure. Each has a work implement with a projecting vertex and a projecting tool at distal end. Applicant's ambiguous claims read on no projecting member on the superstructure and counterweight, present in all three references. All have a projecting vertex on the implement as well as a projecting tool end on the implement. Each reference defines a virtual plane as easily as that of applicant, that angled plane extending through an arbitrary point at the left side of the counterweight and cab (P7 &P3) and through either the vertex or end of the implement. Such a plane does not encompass the entire cab and hence the claim is met.
- 8. As to claims 5-6, all three references have a boomerang shaped implement.

Claim Rejections - 35 USC § 103

- 9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 10. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of references A-C on the attached PTO-892.

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11. Welding, casting and forging are well known processes not given patentable weight in a product claim (MPEP 2113). Further, the vertex and tool of the work implement both have bases attached to the superstructure.

Allowable Subject Matter

12. Claim 7 is allowed.

Response to Arguments

13. Applicant's arguments with respect to claims 1, 4-6 above have been considered but are most in view of the new ground(s) of rejection.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis H. Pedder whose telephone number is (571) 272-6667. The examiner can normally be reached on 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn D. Dayoan can be reached on (571) 272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000,

> Dennis H. Pedder Primary Examiner 11/14/07

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DHP

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